FILE COPY

Supreme Court of the United States

OCTOBER TERM, 1933.

No. 886

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA, THE BALTIMORE & OHIO RAILROAD COMPANY, THE CHESAPEAKE & OHIO RAILROAD COMPANY, ERIE RAILROAD COMPANY, THE MONONGAHELA RAILWAY COMPANY, THE NEW YORK CENTRAL RAILROAD COMPANY, THE NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY, NORFOLK & WESTERN RAILWAY COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, PITTSBURGH, CHARTIERS & YOUGHIOGHENY RAILROAD COMPANY, THE PITTSBURGH & WEST VIRGINIA RAILWAY COMPANY, THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY, WESTERN MARYLAND RAILWAY COMPANY, THE VIRGINIAN RAILWAY COMPANY, WESTERN PENNSYLVANIA COAL TRAFFIC BUREAU, CARNEGIE COAL COMPANY, and Others, Appellants,

vs.

STATE OF OHIO and PUBLIC UTILITIES COMMISSION OF OHIO, and Others, Appellees,

And No. 868

SAME APPELLANTS,

vs.

THE WHEELING & LAKE ERIE RAILWAY COMPANY, and Others, Appellees.

Appeals from the United States District Court for the Southern District of Ohio, Eastern Division.

BRIEF IN OPPOSITION TO MOTION TO ABATE SO MUCH OF THE ORDER OF THE DISTRICT COURT ENTERED IN ABOVE CAUSES ON THE 19TH DAY OF JANUARY, 1934, AS STAYED THE OPERATION AND ENFORCEMENT OF THE ORDER OF THE INTERSTATE COMMERCE COMMISSION OF MAY 2D, 1933, FOR SIXTY DAYS FROM THE FIRST MENTIONED DATE FOR THE PURPOSE OF PERFECTING AN APPEAL TO THE SUPREME COURT OF THE UNITED STATES.

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I. The motion should be denied because the record on which the District Court granted the stay is not before this Court	3
(a) The District Court had power to grant the stay on a proper showing	3
(b) The Court below understood the conditions upon which it might rightfully award the stay complained of by appellants	3
(c) In passing on the applications for a stay the District Court was required to and did consider the evidence submitted at the trial as well as the affidavits in support of and in opposition to the applications	4
(d) In passing upon the propriety of a stay granted by the Court below, this Court invariably examines the record below to ascertain whether there were sufficient grounds for the stay	6
(e) The evidence offered at the trial of the cause in the District Court is not before this Court, and this Court therefore is unable to determine whether there were sufficient grounds for the stay	8
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TABLE OF STATUTES CITED.

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